IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2017

CORAM:
THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

CIVIL MISCELLANEOUS APPEAL NOS. 1625 AND 2557 OF 2016
AND
C.M.P. NOS. 9636 AND 18276 OF 2017

R. Santhakumar (deceased)
1. Mrs. S. Banu
2. Minor. S. Niveditha
3. Minor. S. Srisal @ Balamurugan
(Minors 2 and 3 are represented by
Mother and Natural friend Mrs. S. Banu)
4. Mrs. Muthuramani

.. Appellants/Petitioners in CMA.No.1625 of 2016/
Respondents/Petitioner in CMA.No.2557 of 2016

Versus

1. J. Nickson .. 1st Respondent/1st Respondent in CMA.No.1625/16
1st Respondent/5th Respondent in CMA.No.2557/16

2. United India Insurance Company Limited,
No.53, North Raja Street,
Thiruvallur 602 001

.. 2nd Respondent/2nd Respondent in CMA.No.1625/16
Appellant/2nd Respondent in CMA.No.2557/16

Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 29.02.2016 made in MACT OP No. 5504 of 2012 on the file of Motor Accidents Claims Tribunal, Chennai (II Court of Small Causes, Chennai).

CMA No. 1625 of 2016

For Appellants	:	Mr. K. Suryanarayanan
For Respondents	:	Mr. S. Arunkumar for R2 R1 was set exparte before the lower Court

CMA No. 2557 of 2016

For Appellants : Mr. S. Arunkumar
For Respondents : Mr. K. Suryanarayanan for RR1 to 4
R5 was set exparte before the lower Court

COMMON JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J)

Both these appeals are preferred against the Judgment and Decree dated 29.02.2016 made in MACT OP No. 5504 of 2012 on the file of Motor Accidents Claims Tribunal, Chennai (II Court of Small Causes, Chennai). While C.M.A. No. 1625 of 2016 was filed by the claimants not satisfied with the quantum of compensation awarded by the Tribunal, the Insurance Company has filed C.M.A. No. 2557 of 2016 contending that the quantum of compensation awarded by the Tribunal is excessive and it warrants reduction. Thus, both these appeals are filed questioning only the quantum of compensation awarded by the Tribunal and therefore, we refrain from dealing with the other aspects of the award.

2. For easy reference, the parties to these appeals shall be referred to as 'Claimants' and 'Insurance Company'.

3. The claimants are the wife, children and mother of the deceased Santhakumar. According to the claimants, on 04.09.2012 at about 13.00 hours, when the claimant was riding the motor cycle bearing Registration No. TN 20 M 5323 at C.T.H. Road, Opposite to TSP V Batallion, Avadi, Chennai, the lorry bearing Registration No. TN 02 B 8595 was driven by its driver at a high speed, in a rash and negligent manner and hit the two wheeler driven by the deceased from behind. In the impact, the deceased was thrown out of the vehicle and sustained grievous injuries. The deceased was immediately taken to MIOT Hospital and admitted there as an in-patient. Inspite of best treatment given to him for more than two months, the deceased succumbed to the injuries and died on 29.11.2012. According to the claimants, at the time of accident, the deceased was aged 37 years, employed as Upper Divisional Clerk in Heavy Vehicle Factory, Avadi, Chennai and earning a sum of Rs.40,000/- per month. It is further submitted that had the deceased been alive, he would have rendered atleast 20 years of service but it was lost by reason of his death in the motor accident. According to the claimants, the deceased died due to the rash and negligent driving of the driver of the lorry owned by the first respondent in the claim petition and therefore, both the owner of the vehicle and the insurance company are liable to pay compensation for the death of the

deceased. Accordingly, the claimant have filed the claim petition claiming a sum of Rs.2 Crores as compensation.

4. Resisting the claim petition, the Insurance Company has filed a counter statement before the Tribunal contending that it was the deceased who has contributed to the accident, he was the tort-feasor and there was no negligence attributable on the part of the driver of the lorry. The Insurance Company also denied the age, occupation and earnings of the deceased and prayed for dismissal of the claim petition.

5. Before the Motor Accidents Claim Tribunal, the first claimant examined herself as PW1 along with three other witnesses as Pws 2 to 4. Exs. P1 to P12 were marked on the side of the claimants, On behalf of the respondents in the claim petition, one J. Thigayarajan was examined as RW1 and Ex. R1 was marked. The Tribunal, upon consideration of the oral and documentary evidence made available, concluded that the accident had occurred due to the rash and negligent driving of the driver of the lorry and therefore, the Insurance Company is liable to pay the compensation amount. As regards the quantum of compensation, the Tribunal taken the age of the deceased as 38 years. Based on Ex.P8, Pay slips for the months of June, July and August 2012, the Tribunal concluded that the deceased was earning a sum of Rs.30,000/- per month through his employment as Upper Divisional Clerk in Heavy Vehicles Factory, at Avadi. Having regard to the fact that the deceased has considerable length of left over service, the Tribunal added 50% of the income towards future prospects. Thus, the Tribunal arrived at a sum of Rs.45,000/- per month as the earnings of the deceased. Out of the monthly earnings arrived at, the Tribunal deducted 1/4 of the amount towards personal expenses of the deceased and arrived at a sum of (Rs.45000 - Rs.11250) Rs.33,750/- as the monthly income of the deceased. Thus, the Tribunal arrived at a sum of Rs.4,05,000/- as the annual income of the deceased in which a deduction of Rs.5,000/- was made towards yearly income tax liability. Thereafter, by applying multiplier '15' the Tribunal arrived at (Rs.4,00,000/- X 15) Rs.60,00,000/- as compensation towards loss of earnings. As regards non-pecuniary compensation, the Tribunal awarded a sum of Rs.1,00,000/- each to the claimants towards compensation for loss of love and affection, totalling a sum of Rs.4,00,000/-. Further, a sum of Rs.1,00,000/- was awarded towards loss of consortium to the first claimant/wife. Based on the amount indicated in the medical receipts, Ex.P7, the Tribunal awaded a sum of Rs.19,05,000/- towards medical expenses. That apart, a sum of Rs.50,000/- towards attendant charges, Rs.50,000/- towards transportation expenses and Rs.25,000/- towards funeral expenses were awarded. In all, a total sum of Rs.80,30,000/- was awarded towards compensation to the

claimants, as follows:-

Loss of Pecuniary benefits	:	Rs.60,00,000.00
Medical Bills	:	Rs.19,05,000.00
Transportation	:	Rs. 50,000.00
Attendant charges	:	Rs. 50,000.00
Funeral Expenses	:	Rs. 25,000.00
		Rs.80,30,000.00

6. Even though the Tribunal awarded a sum of Rs.4,00,000/- towards love and affection and Rs.1,00,000/- towards Loss of consortium to the first claimant, this amount of Rs.5,00,000/- was omitted to be included in the total amount of compensation and if it is included, the total amount of compensation would come to Rs.85,30,000.00

7. The learned counsel appearing for the Insurance Company would vehemently contend that the compensation amount awarded by the Tribunal under various heads are exorbitant, excessive and unjustifiable. According to the learned counsel, the Tribunal failed to consider that the income tax liability of the deceased would come to nearly Rs.35,000/- per annum, while so, without any basis, the Tribunal has deducted only a sum of Rs.5,000/- towards income tax liability of the deceased. Further, the Tribunal failed to consider that the employer of the deceased has reimbursed a sum of Rs.4,43,998/- towards medical expenses, while so, without deducting such amount, the Tribunal awarded the entire medical expenses said to have incurred by the claimants at Rs.19,05,000/-. It is further contended that the amount awarded under the heads of Transportation Expenses and Attendant Charges at Rs.50,000/- are exorbitant and they are not based on any legally acceptable evidence. Therefore, the learned counsel for the appellant/ Insurance company prayed for reduction of the compensation amount.

8. On the other hand, the learned counsel appearing for the claimants would contend that even though the Tribunal has awarded a sum of Rs.4,00,000/- towards love and affection to the claimants and Rs.1,00,000/- towards loss of consortium to the first claimant, the said amount was omitted to be included in the compensation amount due to inadvertence and therefore, the claimants are entitled to the said amount. Further, the deceased underwent treatment in hospital for about 85 days as in-patient and therefore, the Tribunal ought to have awarded compensation towards pain and suffering. Therefore, the learned counsel for the claimants prayed for enhancement of the compensation amount.

9. We have heard the counsel for both sides and perused the materials placed. To prove the income of the deceased, the claimants have filed Ex.P8, salary slip of the deceased for the month of June, July and August 2012. However, Ex.P10, Form-16 submitted to the Income Tax Department for the period from April 2012 to September 2012 indicates that the earnings of the deceased was Rs.2,81,839/- for a period of six months and in our opinion, Ex.P10 reflects the correct earnings of the deceased. Therefore, based on Ex.P18, Form-16, the income of the deceased can be fixed as Rs.5,63,678/- per annum (Rs.2,81,839 X 2). As the salary of the deceased per year exceeds Rs.5,00,000/- per annum, it is just and necessary to deduct 10% of the total earnings of the deceased towards income tax and if it is given, a sum of Rs.56,368/- shall be deducted towards income tax. Consequently, the net earnings of the deceased shall be taken as Rs.5,07,310/- per year (Rs.5,63,678 - Rs.56,368/-).

10. As rightly pointed out by the Tribunal, the deceased died at the age of 37 years and therefore, taking into account his left over service, it is just and necessary to add 50% of the net income of the deceased towards future prospects and it could be arrived at Rs.2,53,655/- (Rs.5,07,310 / 2). Thus, the total earnings of the deceased, including future prospectus, could be arrived at Rs.7,60,965/- (Rs.5,07,310 + Rs.2,53,655/-). Out of this amount, if 1/4th amount is deducted, the loss of earnings of the deceased could be awarded at (Rs.7,60,965 - Rs.1,90,241) Rs.5,70,723/-. Applying multiplier '15' to this amount, the compensation amount payable to the claimants towards loss of earning could be arrived at (Rs.5,70,723/- X 15) Rs.85,60,845.00/-.

11. As regards non-pecuniary losses, we find that the Tribunal has awarded a total sum of Rs.19,05,000/- which are based on medical bills filed under Ex.P7 series and therefore, the claimants are entitled to the amount notwithstanding the medical reimbursement said to have been given by the employer of the deceased. Further, even though the Insurance Company has contended that a sum of Rs.4,43,988/- has been reimbursed to the claimants, it was not proved by the Insurance Company by filing any documentary evidence. Further, we also find that the deceased was admitted in the hospital as an in-patient for about 85 days and thereafter he died. Therefore also, we are of the view that the claimants are entitled for a sum of Rs.19,05,000/- towards medical expenses.

12. As regards the amount awarded under other heads, we feel that even though the Tribunal awarded Rs.4,00,000/- towards loss of love and affection to the claimants and Rs.1,00,000/- towards loss of consortium to the first claimant, it was not included while calculating the total compensation amount. While

we are in agreement that the claimants are entitled for Rs.1,00,000/- towards loss of love and affection, we feel that when a sum of Rs.1,00,000/- is awarded to the first claimant towards loss of consortium, a further sum of Rs.1,00,000/- need not be awarded to the first claimant towards loss of love and affection. Thus, we award a total sum of Rs.3,00,000/- towards loss of love and affection to the claimants 2 to 4 and Rs.1,00,000/- to the first claimant towards loss of love and affection.

13. As regards the amount awarded under the head of attendant charges, transportation expenses and funeral charges, we feel that the amount awarded by the Tribunal under these heads are reasonable and befitting to the period of treatment taken by the deceased as in-patient for a period of 85 days in the hospital. Therefore, we confirm the amount awarded under these heads.

14. As regards the contention of the counsel for the claimants for awarding some amount towards pain and suffering, we feel that as the deceased had underwent treatment for about 85 days in the hospital prior to his death, certainly, some amount has to be awarded towards pain and suffering, but the Tribunal failed to award any amount towards the same. Therefore, we are of the view that the claimants are further entitled to a sum of Rs.1,00,000/- towards pain and suffering undergone by the deceased prior to his death.

15. In the result, the compensation amount awarded by the Tribunal is re-calculated as mentioned below:-

Loss of earning	:	Rs. 85,60,845.00
Medical Expenses	:	Rs. 19,05,000.00
Loss of Consortium to 1st claimant	:	Rs. 1,00,000.00
Loss of Love and Affection (Claimants 2 to 4 @ Rs.1 lakh each)	:	Rs. 3,00.000.00
Pain and Suffering	:	Rs. 1,00,000.00
Attendant charges	:	Rs. 50,000.00
Transportation Expenses	:	Rs. 50,000.00
Funeral Expenses	:	Rs. 25,000.00
		Rs.1,10,90,845.00
Rounded off to	:	Rs.1,10,91,000.00

16. In the result, C.M.A. No. 1625 of 2016 filed by the Claimants is allowed enhancing the compensation amount awarded by the Tribunal from Rs.80,30,000.00 to Rs.1,10,91,000.00 (Rupees One Crore Ten Lakh Ninety One Thousand Only) and

consequently, C.M.A. No. 2557 of 2016 filed by the Insurance Company is dismissed. No costs. Consequently, connected C.M.P. No. 18276 of 2016 and C.M.P. No. 9636 of 2017 are closed. The Insurance Company is directed to deposit the enhanced compensation amount, as determined in this appeal, after adjusting the amount, if any deposited already, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the first claimant/wife is permitted to withdraw a sum of Rs.36,91,000/- and the fourth claimant/mother is permitted to withdraw a sum of Rs.20,00,000/-. The balance sum of Rs.54,00,000/- shall be withdrawn by the minor claimants 2 and 3 in equal proportion and such share of the minors is directed to be deposited in a National Bank in an interest-bearing account till they attain majority. Out of such deposit, the first claimant/wife is permitted to withdraw accrued interest once in three months for the welfare of the minor children.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rsh

To

1. The II Court of Small Causes
Motor Accidents Claims Tribunal
Chennai

2. The Section Officer,
VR Section, High Court

+2cc to Mr.K.Suryanarayanan, Advocate, S.R.No.58212 & 58213
+1cc to Mr.S.Arunkumar, Advocate, S.R.No.58410

CMA No. 1625 & 2557 of 2016

CNR(CO)
CS/13/10/17